

# THE RETIREMENT OF MARINE GEN. CARL MUNDY

Mr. LEAHY. Mr. President, I rise today in tribute to Gen. Carl Mundy, who retires this Friday after 38 years of service to our Nation.

Carl Mundy has made his career around a title that we as Americans have held sacred for over 200 years: leader of Marines. He was commissioned in 1957, at the height of the cold war, and served a tour in Vietnam, where he was wounded and decorated for bravery.

Carl Mundy has had the difficult job of leading the corps during the difficult transition out of the cold war and into the uncertainties of today's world. But under his leadership, as the Marines have reduced their forces, they have maintained the professionalism and esprit that have been demonstrated throughout our history.

On Carl Mundy's watch, Marines participated in dangerous operations around the world that were executed with such quiet excellence that many Americans barely notice. The mission in Somalia was fraught with danger, and from the initial intervention to the recent quiet withdrawal of U.N. forces, General Mundy's Marines were there.

The Haiti invasion was equally dangerous, and our Nation's Marines were up to the task of bringing democracy back to that poor nation.

Most recently, Marines showed their flexibility and bravery by rescuing downed Air Force pilot Scott O'Grady from hostile Bosnia, an extraordinary feat that demonstrated why I call the Marines our 911 force—they are the ones you call in the middle of the night and who are ready to go.

Throughout it all, Carl Mundy's determined leadership was there, extending from the halls of the Pentagon down to the fresh privates who march with that unique Marine swagger off the famous drill fields of Parris Island, SC. I know, because my son Mark was one of those young privates.

The life of a Marine is difficult, and when Marines are gone for months at a time doing dangerous work, no one bears that burden more than the families who are left back at home. They are the unsung heroes of our military, and I want to pay special tribute to Carl's wife Linda, and his children Elizabeth, Carl III, and Timothy. I know that Carl is proud that both his sons wear the Marine uniform, and that serves as further testimony to the sense of duty that pervades the Mundy family.

Carl may come across as the prototypical square jawed Marine, but I know him as a man with a sense of humor and the confidence to laugh at himself. I also have it on good authority that he has a secret life as Carl Mundy, the country and western songwriter who can work a mean cut buck-et bass and can sing every verse of "Mountain Dew."

Mr. President, I have gotten to know General Mundy in the last 4 years

through my work on the Defense Appropriations Subcommittee. I have found him to be a vigorous advocate for the Marine Corps and, I am proud to say, a friend. On behalf of many of us here in the Senate, I want to extend my sincere thanks to Carl Mundy for a career of service to our Nation, and offer our best wishes to the Mundy family for a fulfilling and well-deserved retirement.

## LAWYERS, GARDEN SLUGS AND CONSTITUTIONAL LIBERTY

Mr. HEFLIN. Mr. President, I recently had the opportunity to read a commencement speech given on May 21, 1995 by my long time friend, the Hon. Loren Smith, chief judge of the United States Court of Federal Claims, to the graduating class of the John Marshall Law School, in Atlanta, GA.

The title of the speech is "Lawyers, Garden Slugs, and Constitutional Liberty," and its theme deals with the relationship of the lawyer in our society to the concept of constitutional liberty. Chief Judge Smith makes some significant points that I think are worthy of consideration by my colleagues, and I ask unanimous consent that it be printed in the RECORD at this time.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

### LAWYERS, GARDEN SLUGS AND CONSTITUTIONAL LIBERTY

(By Loren A. Smith)

A couple of years ago, I spoke at another law school's commencement on the topic of our Constitution. Now this may sound like a somewhat weighty topic, perhaps even an overly academic one. After all, this day marks the end of your law school career; not some guest lecture during the second year. However, I thought it was an appropriate speech because the Constitution is both the base and pinnacle of the legal system in which you will spend the rest of your legal careers. Every law you will ever deal with must be consistent with the Constitution's commands. How's that for some heavy thoughts on what will otherwise be a happy and well-earned day of celebration?

Well, I hope this speech will strike you as just right. And what do I mean by just right? I am thinking of the Colonel who gave his orderly a bottle of scotch for Christmas. After the holiday he asked the orderly how it was. The orderly replied: "Just right." "That's kind of a funny expression," the Colonel responded, "what do you mean?" The orderly noted: "Well, if it had been any better you wouldn't have given it to me, and if it had been any worse I wouldn't have been able to drink it!"

I hope my speech is not "just right" in that sense. However, you have to drink it and for that I hope I won't have to apologize to you.

I believe that as important as the Constitution is as the foundation of our legal system, it is far more important for the central significance it has to American life. That significance lies in the fact that the Constitution makes us Americans. It is the very basis of our nationality.

We the people of this land are not defined by race; we are black and white, brown and yellow. We are not defined by religion; we are Protestant, Catholic, Jewish and also

Moslem, Hindu and Orthodox. We are not defined by national origin as all of our ancestors immigrated to this continent from somewhere else. Even the first Americans crossed the Bering land bridge from Asia. We are men, women and children, English speakers, Spanish speakers and speakers of a thousand other tongues. What makes us Americans, however, is a simple concept expressed in a few words: we uphold, support and defend Our Constitution. In no other Nation, past or present, has such a nationality existed. All one has to do to be considered an American is take an oath to support and defend the Constitution.

This idea is a fitting topic for a law commencement speech because each graduate joins a profession whose duty is to give life to the rights, responsibilities, and promises found in our Constitution and the laws enacted under it.

Thus, it would be easy for me to read the same speech I delivered in 1993, as I assume only a particularly weird masochist would put his- or herself through two law schools, and there isn't likely much faculty overlap with over 165 U.S. law schools. However, I won't give the same speech. On this your last day of law school, you are entitled to something new, after three years of reading used precedent that is based upon even more used precedent.

Thus, I have crafted two profound topics—Would you believe stimulating? Would you believe the subject of possible college term papers? Okay.

Topic One: Why does the general public seem in recent years to have the view that lawyers are somewhere on the evolutionary scale between pond scum and garden slugs?

Topic Two: What do we mean by liberty? Of course, you also want to know what is the relationship between these two topics.

With respect to the first topic, there has been a profound change over the past 25 years in the way society views lawyers. In the 1950s and 60s and for many earlier decades lawyers were social heroes. They were the trustees, who could be trusted. They were the advocates of just causes who sought and more often than not achieved justice. They were the guardians who faithfully guarded our liberties.

Lawyers were at the forefront of struggles for economic liberty, for civil rights, for fair government, and for protecting the rights of the unpopular as well as the popular. They made the criminal justice system achieve justice whether by convicting the guilty or acquitting the innocent. And perhaps overlying all of this they were the wise and practical counselors of our society. Prudence or practical wisdom was their province. Calling someone a good attorney meant they were a person of character.

On TV they were the heroes whether as Mr. District Attorney or Perry Mason. President John F. Kennedy's book "Profiles in Courage" is replete with lawyers. Lawyers crafted the Constitution, achieved its ratification, and played a critical role in the survival of our republic. Abraham Lincoln was a very successful practicing lawyer, as were John Adams, Thomas Jefferson, and James Madison. Alexis de Tocqueville saw lawyers as America's aristocracy. And Americans on the whole agreed with this view for most of our history.

What has happened to change this in the last 25 or so years? And when thinking about that question remember the OJ trial has not been going on that long, but only seems like it has.

Here is perhaps where the second topic is related to the first. What is the nature of liberty? It seems to me that the proper definition of liberty must be contrasted with government. Simply put, liberty is the state of

being left alone by government. Now, this means more than not having the government be able to bother you. It means having a legitimate expectation that government will not interfere with you as long as you meet some minimal conditions—such as not interfering with other people's rights to be left alone. In this sense liberty is an exclusively negative concept. It is not a claim on government. It is not a right to have government do something you want it to do. It is a "right" to engage in the pursuit of happiness free from government restraint except as already noted.

The Framers of our Constitution talked about life, liberty and property as fundamental, indeed natural rights. What they meant by this was not three separate interests. Rather they were referring to the fundamental integrity of the human person. James Madison, perhaps the most influential figure in our Constitution's birth and development, made this clear when in 1792 he wrote, in an essay entitled, "Property".

"This term in its particular application means 'that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual'.

"In its larger and juster meaning, it embraces every thing to which a man may attach a value and have a right; and which leaves to every one else the like advantage.

"In the former sense, a man's land, or merchandize, or money is called his property.

"In the latter sense, a man has property in his opinions and the free communication of them.

"He has a property of peculiar value in his religious opinions, and in the profession and practice dictated by them.

"He has property very dear to him in the safety and liberty of his person.

"He has an equal property in the free use of his faculties and free choice of the objects on which to employ them.

"In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights."

Life, liberty and property for the Framers meant the protection of the fundamental integrity of the human person against government. It sometimes meant that protection must be maintained against the democratic majority. Liberty was opposed to arbitrary power whether legislative, executive or judicial. The system established by the Constitution was not designed for efficiency, but precisely the opposite purpose, to contain and control, to check and limit what was seen as a very real threat to human happiness: government.

This is not to suggest that the Framers were anarchists. They were wise and practical people (and lawyers) who perceived that fallen humans at times need the restraining hand of government to protect them from one another. However, they saw this as a purely negative role. While government might prevent some unhappiness, it could never create happiness.

Now let me try to tie my two themes together. When lawyers serve in the traditional mode as officers of the legal system—and this means guardians of constitutional liberty—they are heroic figures. They keep the dangerous yet necessary leviathan of government within its proper sphere. This is a role that gives dignity to the profession. It is also what I contend has been responsible for the extraordinarily good image the profession has had for most of our history.

This, of course, is a simplification. There have been notorious examples of bad lawyers and judges throughout the American past. In fact, like any group of human beings, most lawyers and judges never lived up to the

ideal. Of course, very few human beings ever live up to their ideals, which is the reason why real saints and heroes are in short supply even in free market economies. However, the ideal was a very real part of our culture for much of our history. It ennobled the profession and gave individuals something to strive for. Lawyers had the role of guardians of the citizens' liberty and property. Both lawyers and citizens accepted this role.

Today, however, that image has changed. Beginning in the later part of the 19th century, as has been noted by Dean Anthony T. Kronman of Yale Law School in his book "The Lost Lawyer," the idea took shape and developed slowly through the 20th century that lawyers were social engineers or power brokers or the mediators between private and public "rights." The names changed with the years but the concept was that the legal system's purpose was to reform and improve society.

No longer were lawyers the guardians against power, they were the apparatchiks, to use a Soviet term, or the henchmen of power. They had become the sorcerer's apprentices. Increasingly, lawyers' incomes and economic prospects became attached to the operation and growth of the administrative state. Lawyers increasingly became the functionaries of that state. To be sure, their ideal goal was to make that system relatively fair and efficient. Still, they were no longer the guardians who kept it in check or the knights-errant who fought against it when necessary.

This fundamental shift in the relationship of the lawyer to constitutional liberty is, I would submit, the principle reason for the drastic decline in the public's view of lawyers over the last quarter century. The people have never liked the king's agents, even when they have liked the king. To manipulate power is not an ideal. In many ways it is a curse. A hundred new model codes of professional conduct, backed up by a thousand disciplinary boards, will not restore the profession's sense dignity, status and self worth. Stature comes not from self-regulation but from self-definition. And the choice of self-definition is fairly simple: user of power or defender of liberty against government.

I should add, lest there be any confusion, this is not an attack upon government attorneys. In fact, they are the frontline guardians of liberty against government. Whether in recent decades or before, their commitment to liberty against government has been no worse, and sometimes better, than non-government attorneys. Those in government often know best the blessings of limited government and most clearly understand the dangers of the leviathan state.

What is to be done? That really is the challenge you face. There are no immutable laws of history or culture as the recent transformation of Russia has proved. Daily in this nation and abroad we see what several decades ago was thought impossible in science, medicine, economics or politics become the facts of the nightly news. The historical junkyard is littered with the ruins of many so-called "laws of history," which decreed how inevitable were their bleak and sterile visions of the future.

Each generation has the power to restore true values, and more importantly each individual has the ability to determine his or her own destiny and path toward salvation. The values you hold and the goal of your life are within your power to create and achieve. It's up to you. On this your graduation day, as Holmes said—Sherlock that is, not Oliver Wendell—"The game's afoot." May God speed and bless that game for each of you. And may you each treat that precious degree, stained with sweat and tears, and possibly highlighter and beers, if not blood, as

your sword and shield to guard, defend and further liberty.

#### THE 1995 BASE CLOSURE LIST

Mrs. FEINSTEIN. Mr. President, I rise today in strong opposition to the 1995 base closure list and to urge the President to reject the Base Closure Commission's recommended hit list.

In this base closure round, the Commission voted to close or realign 9 out of the 12 military bases in California that were reviewed, many against the recommendation and advice of the Secretary of Defense.

In addition to the adverse national security impact of the Commission's action, the economic impact on California—particularly the cumulative economic impact—will be enormous.

#### ECONOMIC IMPACT OF BASE CLOSURES

California is being hit disproportionately hard by base closures. In three previous rounds, 22 major bases in California have been slated for closure or realignment—more than double any other State.

California is home to only 15 percent of all Defense Department personnel. Yet, California has lost more than 82,000 of the nearly 120,000 net direct jobs—military and civilian—lost nationwide since 1988 as a result of base closures alone.

All total, these actions have resulted in the loss of more than 200,000 direct and indirect jobs and \$7 billion in annual economic activity in California.

I do not believe it is appropriate to proceed with another base closure round when the full impact of previous base closures has not yet been felt. In California, bases slated for closure in 1988 are just now starting to close their gates, and few are having success in reuse and redevelopment efforts.

If the current base closure round goes forward, 58,000 additional direct and indirect California jobs will be impacted—7,900 direct military and 19,000 direct civilian personnel. Major bases in California which the Commission has targeted include:

McClellan Air Force Base in Sacramento;

Long Beach Naval Shipyard in Los Angeles County;

Onizuka Air Station in Sunnyvale;

Oakland Army Base in Alameda County;

Sierra Army Depot in Lassen County; and

Fort Hunter Liggett in Monterey County.

With the addition of defense industry layoffs in California—which have claimed 250,000 jobs in just the past few years—California stands to lose more than half-a-million jobs as a result of base closures and defense downsizing.

And, defense industry downsizing is expected to continue through the end of the decade with the loss of another 250,000 jobs. Enough is enough.

By law, economic impact must be considered by the Commission when determining what bases to recommend